



## **Weekly Summary of Cases**

### **National Labor Relations Board**

Week of July 26-30, 2010, W-3271

The *Weekly Summary* is provided for informational purposes only and is not intended to substitute for the opinions of the NLRB. Inquiries should be directed to the Office of Public Affairs at [Publicinfo@nlrb.gov](mailto:Publicinfo@nlrb.gov) or 202-273-1991.

### **Summarized Board Decisions**

***Transcare New York, Inc.*** (29-RC-11762, 355 NLRB No. 56) New York City, NY, July 29, 2010. [[HTML](#)] [[PDF](#)]

The Board majority (Chairman Liebman, Member Becker) granted review with respect to the Petitioner's objection alleging unlawful surveillance of employees by managers and supervisors outside voting sites at three facilities, remanded the objection for a hearing, and denied review in all other respects. In directing a hearing, the majority also considered that the Acting Regional Director directed a hearing with respect to one of the facilities, and that there was a pending related unfair labor practice complaint alleging unlawful surveillance in the Petitioner's objection. Member Schaumber, dissenting in part, found that the Petitioner failed to establish that the Acting Regional Director's decision not to conduct a hearing was clearly erroneous.

Petitioner – International Association of EMT's and Paramedics, National Association of Government Employees, SEIU Local 5000. Chairman Liebman and Members Schaumber and Becker participated.

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***Environmental Maintenance Solutions, Inc.*** (2-CA-38340, 2-RC-23211, 355 NLRB No. 58) Pleasantville, NY, July 30, 2010. [[HTML](#)] [[PDF](#)]

The Board agreed with the Administrative Law Judge and found that the employer, a cleaning company, did not violate the Act by discharging two employees for concerted and union activities and by informing their employees that the two had been discharged for trying to unionize the company. The Board also agreed with the ALJ regarding her resolution of the challenges to the employees' ballots and her rejection of the employer's election objections. The Board specifically found that the secrecy of the ballot was not compromised by employee loitering near the polls. However, in also agreeing with the ALJ that there was no merit in the employer's objection that the late opening of the polls affected the outcome of the election, the Board did not rely on the ALJ's finding that no eligible voters arrived to vote during the delay in the polling. Instead, the Board found that the total number of resolved challenged ballots (3) and eligible non-voters (9) could not overcome the Union's 13-vote margin of victory. Therefore, the Board certified the Union as the employees' bargaining representative.

Charge filed by Local Union 966, the International Brotherhood of Teamsters and Petitioner an Individual. Administrative Law Judge Eleanor MacDonald issued her decision August 28, 2008. Chairman Liebman and Members Schaumber and Pearce participated.

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***International Brotherhood of Electrical Workers, Local 71*** (8-CD-506; 355 NLRB No. 59) Bucyrus, OH, July 30, 2010. [[HTML](#)] [[PDF](#)]

The Board denied a motion to quash from Laborers' International Union of North America, Local 1216, and found reasonable cause to believe that the Act had been violated and that there were competing claims to the work in dispute. The Board found that the work in this jurisdiction dispute should be awarded to employees represented by International Brotherhood of Electrical Workers, Local No. 71, based upon the factors of: collective-bargaining agreements; employer preference and past practice; relative skills; and economy and efficiency of operations.

Charge filed by the U.S. Utility Contractor Company Inc. and Laborers' International Union of North America, Local 1216. Chairman Liebman and Members Becker and Pearce participated.

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***International Union of Operating Engineers, Local 137 and Teamsters Local 456***  
***International Brotherhood of Teamsters*** (2-CD-1154, 1155; 355 NLRB No. 57) Elmsford and Briarcliff Manor, NY, July 30, 2010. [[HTML](#)] [[PDF](#)]

The Board resolved a jurisdictional dispute under Section 10(k) of the Act between Operating Engineers Local 137 and Teamsters Local 456, on one side, and Laborers International Union Local 731 on the other, over work performed at Eastern Concrete Materials. The Board found that by all the criteria that are applied in resolving 10(k) disputes, the Operating Engineers and the Teamsters were entitled, respectively, to perform the work at issue. The record established that the Operating Engineers and the Teamsters alone had contracts with the employer for that work, and that their members have performed the work since the employer took over the facility. In addition, the geographic jurisdiction of the Laborers – unlike the jurisdictions of the Operating Engineers and the Teamsters – did not extend to the locality of the work in dispute, and the Laborers had no history of representing such work classifications in that locality.

Charges filed by Riverside Materials, LLC d/b/a Eastern Concrete Materials and Local 731, Laborers International Union of North America. Chairman Liebman and Members Schaumber and Pearce participated.

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## **Unpublished Board Decisions in Representation Cases**

***Standard Components, Inc.*** (7-RC-23330) Sterling Heights, MI, July 26, 2010. No exceptions having been filed to the Hearing Officer's report recommending disposition of challenged ballots in an election held March 10, 2010, the Board adopted Hearing Officer's findings and recommendations, and found that a certification of results of election should be issued. Petitioner – District Lodge 60, International Association of Machinists and Aerospace Workers, AFL-CIO.

***Northern Health Facilities, Inc., (a subsidiary of Extendicare Health Services, Inc.), d/b/a Mountain City Nursing and Rehabilitation Center*** (4-RC-21674) Hazle Township, PA, July 28, 2010. Order denying Employer's request for review of Regional Director's decision and direction of election. Petitioner – SEIU Healthcare Pennsylvania. Chairman Liebman and Members Becker and Pearce participated.

**HP Hood LLC** (3-RC-11971) Sodus, NY, July 28, 2010. Order denying Employer's request for review of the Regional Director's decision and direction of election. Petitioner – International Brotherhood of Teamsters, Local 118. Chairman Liebman and Members Becker and Pearce participated.

**French American School of the Pacific Northwest d/b/a The Portland French School** (36-RC-6481) Portland, OR, July 29, 2010. No exceptions having been filed to the Hearing Officer's report recommending disposition to an election held April 16, 2010, the Board adopted Hearing Officer's findings and recommendations, and directed the Officer in Charge to open and count ballots. Petitioner – Associated French School Employees affiliated with American Federation of Teachers, AFL-CIO.

**Mashantucket Pequot Gaming Enterprise d/b/a Foxwoods Resort and Casino** (34-RC-2392) Ledyard, CT, July 30, 2010. Order denying Employer's and Intervenor's requests for review of the Regional Director's decision and direction of election. Petitioner and Intervenor – United Food and Commercial Workers, Local 371 and Mashantucket Pequot Tribal Nation, respectively. Chairman Liebman and Members Becker and Pearce participated.

**Watkins Security Agency of D.C.** (5-RD-1465); **U.S. Security, Inc.** (5-RD-1466); **AlliedBarton Security Services, LLC** (5-RD-1467); **Business Resource and Security Services USA, Inc.** (5-RD-1468); **Securitas Security Services USA, Inc.** (5-RD-1470) Washington, DC, July 30, 2010. By direction of the Board: Motion granting United Government Security Officers of America, Local 21 to withdraw its requests for review in above-captioned cases and remanding them to the Regional Director for further appropriate action. Petitioner – Individuals.

**Spartech Polycom, Inc.** (06-RC-12743) Donora, PA, July 30, 2010. No exceptions having been filed to the Regional Director's report recommending disposition of them in an election held May 20 and 21, 2010, the Board adopted Regional Director's findings and recommendations, and found that a certification of representative should be issued. Petitioner – Teamsters Local 205 affiliated with the International Brotherhood of Teamsters.

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## **Decisions of Administrative Law Judges**

**Majoongmool Corp., d/b/a Always is Nails, New Always Nails, Corp., d/b/a Always is Nails, Always Nails II, Inc., d/b/a Always is Nails, J.H. Diva Nail and Spa, Inc., d/b/a Diva Spa and Nails, and Viva Nails & Spa, Inc., d/b/a Diva Spa and Nails a single employer** (29-CA-28950, et al.; JD(NY)-28-10) Old Bethpage, NY. Charges filed by Chinese Staff and Workers Association. Administrative Law Judge Joel P. Biblowitz issued his decision July 26, 2010. [\[HTML\]](#) [\[PDF\]](#)

**Community Health Services, Inc. d/b/a Mimbres Memorial Hospital and Nursing Home** (28-CA-16762 et al.; JD(SF)-29-10) Deming, NM. Charges filed by United Steelworkers of America District 12, Subdistrict 2, AFL-CIO-CLC. Administrative Law Judge William L. Schmidt issued his supplemental decision July 29, 2010. [\[HTML\]](#) [\[PDF\]](#)

**Beacon Sales Acquisition, Inc. d/b/a Quality Roofing Supply Company** (4-CA-36852, 36879; JD-41-10) Philadelphia, PA. Charges filed by International Union of Operating Engineers Local 542, AFL-CIO. Administrative Law Judge David I. Goldman issued his decision July 29, 2010. [\[HTML\]](#) [\[PDF\]](#)

***Solutia, Inc.*** (1-CA-45447; JD-39-10) Springfield, MA. Charge filed by United Food & Commercial Workers Union Local 414C / International Chemical Workers Union Council, Affiliated with United Food and Commercial Workers International Union, CLC. Administration Law Judge Jeffrey D. Wedekind issued his decision July 30, 2010. [[HTML](#)] [[PDF](#)]

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